

SOL SINGER
GRETCHEN CAPITAL, LTD.

IBLA 78-96

Decided June 23, 1978

Appeal from letter of the Utah State Office accepting relinquishment by lessee of oil and gas lease U-36326.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Relinquishments

An application for assignment of an undivided partial interest in an oil and gas lease is properly approved by BLM effective the first day of the lease month following the date of filing of the application. In the interim between the filing of the application and the effective date of the assignment, the prospective assignor remains the sole lessee, and, as such, is the only person who may relinquish rights under the lease.

2. Oil and Gas Leases: Relinquishments

A document expressly relinquishing all rights to an oil and gas lease, signed by the sole lessee, may not be disregarded unless the lessee or one with clear authority to act on his behalf revokes the relinquishment in advance of its filing.

APPEARANCES: James W. McDade, Esq., Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On January 28, 1977, the Utah State Office of the Bureau of Land Management (BLM) issued oil and gas lease U-36326 to Sol Singer. On

October 11, 1977, Singer filed an assignment of an undivided one-third interest in this lease to Gretchen Capital, Ltd. (Gretchen). Also on October 11, 1977, BLM approved this assignment, but not effective until November 1, 1977.

On October 18, 1977, BLM received a telephone call and telegram from Gretchen indicating that BLM should disregard a "letter of October 7, 1977," as it did not "wish to relinquish this lease at this time." No letter dated October 7 was in the file on this date. Singer did not join Gretchen in this telegram or telephone call.

On October 21, 1977, the letter dated October 7, 1977, arrived at BLM. This letter expressly relinquished all rights, title, and interest in the lease, and was signed both by Singer and by an agent of Gretchen.

Also on October 21, 1977, a letter signed only by Gretchen's agent was filed, stating that, as provided in its telegram, it did not wish to drop the lease.

On November 3, 1977, BLM approved Singer's relinquishment of the lease effective October 21, 1977, the date on which the letter of October 7 was filed with BLM. On November 7, 1977, BLM sent Gretchen a letter notifying it that it had closed the case, as Singer had relinquished the lease as of October 21, 1977. Gretchen and Singer have appealed from this action. We affirm.

[1] On October 11, 1977, Singer filed with BLM a request for an assignment of an undivided one-third interest in his lease. BLM may approve such an assignment only under the terms of the regulations, including 43 CFR 3106.3-3, governing the effective date of an approved assignment, which provides as follows: "Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper office of all the papers required by this subpart." Thus, BLM properly approved the assignment effective November 1, 1977. Moreover, General Instruction No. 3 in the application for assignment filed by Singer and Gretchen provides as follows: "Assignment, if approved, takes effect on the first day of the month following the date of filing of all required papers." In the interim between October 11 and November 1, 1977, Singer remained the sole lessee, and Gretchen could not take the assigned interest in the lease until this date.

Under 30 U.S.C. § 187b (1970), " * * a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease * * *." This provision is also set out in the regulations. A relinquishment is effective from the first instant of the day upon which it is filed. Humble Oil & Refining Co., 64 I.D. 5 (1957). 43 CFR 3108.1. On October 21, 1977,

Singer, the sole lessee, filed an express relinquishment of all rights to the lease in question, as he alone was empowered to do. Thus, there would be no doubt that the lease would have been relinquished on this date, but for Gretchen's attempts on October 18 and 21 to block the effectiveness of Singer's relinquishment by revoking it.

[2] These attempts by Gretchen to revoke Singer's relinquishment were ineffective. Until November 1, 1977, the only person with the power to relinquish the lease was Singer, the sole lessee. On October 21, Singer filed a document expressly relinquishing the lease. Such a document, signed by the sole lessee, may not be disregarded unless he or one with clear authority to act on his behalf revokes the relinquishment in a timely manner.

The attempts to revoke the relinquishment, filed October 18 and 21, while arguably timely, ^{1/} were not endorsed by Singer, the sole lessee. In their joint statement of reasons, appellants admit that "[i]t should be noted that appellant, Sol Singer, did not, by designation, join in the request that the withdrawal be rescinded." Nothing in the record indicates that Singer had authorized Gretchen to act on his behalf to revoke the relinquishment. In such circumstances, BLM properly regarded Singer's relinquishment as being in full force on October 21, 1977, when it was filed, and properly gave it effect as of that date.

Appellant submits that Singer's lack of participation in the attempt to revoke the relinquishment is immaterial, in that Gretchen's prospective interest in the lease was known by BLM when the attempted revocation was filed. This does not follow. The fact that Gretchen was a prospective assignee of an undivided one-third of Singer's lease did not give it the power to act on Singer's behalf. Even though BLM knew that Gretchen was Singer's prospective assignee, it could not assume that Singer wished, as Gretchen did, to revoke his relinquishment. It was Singer's sole right to relinquish this lease until November 1, because, as required by the regulations, he was the sole lessee until this time, despite the application for partial assignment. Appellants should have known this, as it is clearly set out both in the regulations and in the application form for assignments. Singer apparently relinquished his lease and took no action to vitiate his relinquishment. If he had wished to revoke his relinquishment, he might have so informed BLM in writing in a timely manner.

^{1/} A disavowal of a relinquishment of an oil and gas lease is untimely and, therefore, ineffective if filed after the relinquishment is filed. Roy W. Reed, 7 IBLA 321 (1972); Thomas F. McKenna, 62 I.D. 376, 379 (1955). The attempts to revoke the relinquishment here were filed before and contemporaneously with the filing of the relinquishment on October 21.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

This case has strange aspects. Although the appeal filed in the case purports to be in behalf of Sol Singer, as well as Gretchen Capital, there is no clear statement that Gretchen was authorized to revoke the relinquishment of the oil and gas lease in behalf of Singer. If Singer had authorized Gretchen to act in his behalf, a signed statement to that effect by Singer and other corroborating evidence of Gretchen's authority in that regard would help to establish the alleged error in sending the relinquishment and Singer's corrective action of revocation by one authorized by him.

The relinquishment document itself raises other questions which would require further inquiry into the validity of the lease were the matter no longer moot because of the effect of the relinquishment. The document is signed by Sol Singer and Eugene Monesi for Gretchen Capital, Ltd., with an execution date of December 20, 1976. Another date, October 7, 1977, appears at the top of the instrument. Singer's lease offer was also executed on December 20, 1976. He attested at that time he was the sole party in interest in the lease. At the very least, Gretchen and Singer would have to show clearly that Singer was, in fact, the sole party in interest on December 20, 1976, as it seems very questionable the relinquishment document would be executed with Gretchen the very same day the offer was executed without Singer and Gretchen having some agreement or arrangement at that time giving Gretchen an interest in the offer and lease, as defined by the regulations, 43 CFR 3100.0-5(b).

Joan B. Thompson
Administrative Judge

